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*United States District Court, District of Massachusetts.*UNITED STATES v. THIRTY-THREE BARRELS OF DISTILLED SPIRITS ET AL.<sup>1</sup>

The words "personal property" in the 48th section of the Internal Revenue Act of 1864, as amended by the Act of 1866, do not include all the personal property found in the same building where the still and illicitly-distilled spirits were found, and in the possession, custody, and control of the same person who had control thereof, but must be confined to the tools, implements, and instruments that had been or could be used in connection with the distillation of spirits in the building.

THIS was an information against the contents of a four-story building on Central Wharf, in the city of Boston. There was a still in the attic of the building, a grocery store on the first floor, where liquors were sold at retail, and on the second and third floors there were barrels, chemicals, and other articles, such as might be used in the manufacture of spirits. The contents of the grocery store, excepting certain barrels of liquors, were claimed by John Lombard. At the trial before a jury, the government contended that the whole was one establishment, and that the grocery store was used only for purposes of concealment in carrying on the illicit distillation in the attic, and that the whole was forfeited to the United States. The jury condemned the whole property. A motion for a new trial and a motion for an arrest of judgment were made by the claimant.

*W. A. Field*, for the United States.

*L. S. Dabney*, for claimants.

LOWELL, J.—In this case there is a motion for a new trial on the ground that the verdict is against the weight of the evidence, and a motion in arrest of judgment. The information, as amended, alleges in the 5th count that certain distilled spirits were found at No. 45 Central Wharf, Boston, in the possession, custody, and control of one John Lombard, for the purpose of being sold by him in fraud of the revenue laws; that two hogsheads of molasses were found at the same place in the possession of said Lombard, and were raw materials which he intended to

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<sup>1</sup> We are indebted for this case to the "Internal Revenue Record."—ED. AM. LAW REG.

manufacture into distilled spirits, for the purpose of fraudulently selling the same, and evading the taxes thereon, and that the other goods, wares, merchandise, and property seized, which appear to form the stock, furniture, and fixtures of a retail dealer in liquors and groceries, were tools, implements, instruments, and personal property found at the same time and in the same building with the spirits and the molasses, and in the possession, custody, and control of the said Lombard.

The other amended counts differ from the 5th count, in substance, only as to the person in whom the custody is alleged to be.

The law under which the information is brought is § 48 of the Act of 1864, ch. 173, 13 Stat. 240, as amended by the Act of 1866, ch. 184, 14 Stat. 111. As the act stood at first, all goods, &c., on which duties are imposed which shall be found in the possession, &c., of any person for the purpose of being sold or removed in fraud of the internal revenue laws, may be seized and shall be forfeited, and so of raw materials intended to be manufactured for the purpose of being so sold, and also all tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or enclosure where such articles are found, *and intended to be used by them (i. e., the persons before mentioned), in the manufacture of such raw materials.* The new statute amends the phraseology of this section in several other particulars, without perhaps much variation of the meaning, but omits altogether the qualifications of intended use of the tools, implements, instruments, and personal property, and upon a literal interpretation might seem to subject to seizure and forfeiture all goods and chattels and other things coming within the very general description of personal property, to whomsoever it may belong, if found in the same building, including out-buildings, yard, &c., with the offending goods.

It is impossible to believe that any such sweeping condemnation is intended to be passed, founded upon mere proximity in place, upon the goods of all persons innocent and guilty. In its application to a city or other busy place, where the same building is divided into numerous tenements, shops, offices, counting-houses, and warerooms, all being often found under one roof, and each occupied by a different tenant, the operation of such a law would work the most enormous and unheard-of injustice. To take a

single example, the money in the vaults of any bank might be forfeited for the fault of some petty trader in the attic of the banking-house. It is a general principle of law as well as of natural justice, that statutes will not be understood to forfeit property except for the fault of the owner or his agents, general or special, unless such a construction is unavoidable. See *Peisch v. Ware*, 4 Cranch 347; *Freeman v. 403 Casks Gunpowder*, Thacher Crim. Cases 14.

This information does indeed allege that the personal property sought to be confiscated was in the possession or under the control of the wrongdoer. But even if the statute be limited in that way, it will be most arbitrary and unjust in its operation, for the punishment will bear no sort of necessary relation to the offence. The crime is punished by the very same section with a fine of \$5000, or double the amount of the tax; but this forfeiture may be indefinitely greater than either. But the more valid reason against this construction is, that nothing in the statute itself points to the possession or control of this personal property as deciding its status, but only and solely the place where it is found. A forfeiture of the goods of the same owner, found with the unlawful goods, is not without precedent in revenue laws, and I was at first disposed to believe that such was the meaning of this statute, but upon a more careful inquiry, I am satisfied that the construction presently to be mentioned, is more consistent with the words of the law. By reason and analogy, as well as by the context, we find that some real connection with the fraud is intended to be attached to the property that is liable to seizure. The untaxed articles and the raw materials intended to be manufactured, are the principal things, and the tools, implements, instruments, and personal property, are only the connected incidents. I am of opinion that by the familiar rule of construction, sometimes cited *noscitur a sociis*, we must restrict the general words personal property, by the more particular and immediately preceding words, tools, implements, and instruments. Such a restriction has been adopted in many well-considered cases. Thus, where it was enacted that no tradesman, artificer, workman, laborer, or other person whatsoever, should do or exercise any worldly labor, business, or work of their ordinary callings upon the Lord's day, the Court of King's Bench held unanimously that this did not include drivers of stage-coaches: *Sandiman v. Breach*, 7 B. & C. 96.

So any artificer, calico printer, handicraftsman, miner, collier, pitman, keelman, glassman, potter, laborer, or other person who shall contract with any person whomsoever, for any time or times, does not include domestic servants: *Kitchen v. Shaw*, 7 A. & E. 729, 1 N. & P. 791.

Other examples of a restricted construction of the general words of a statute are *Rex v. Manchester Waterworks*, 1 B. & C. 680; *Rex v. Mosely*, 2 Id. 226; *Coolidge v. Williams*, 4 Mass. 140; *Sprague v. Birdsall*, 2 Cow. 419. And in the construction of deeds and wills, it is not unusual to confine general expressions by a regard to the context. Thus, "all my estate of what kind soever," being connected with words referring only to chattels, was held not to pass real estate: *Sanderson v. Dobson*, 1 Exch. 141.

In the present case the words, "tools, implements, and instruments," are carelessly used, and are mere surplusage, and the general words "personal property," are intended to include them. Why mention tools and implements if everything but real estate is to be confiscated? And if any specification is desired, why not specify the property much more important and more likely to be found in such a connection, namely, the stock in trade, notes, money, &c., before the general words? It cannot be doubted that the tools, implements, and instruments here forfeited, are those with which the unlawful business is carried on; and if that is so, does not their enumeration exclude all other tools, implements, and instruments? If a carpenter's tools, a surgeon's instruments, or a dressmaker's sewing-machine are found in a distillery, can they be forfeited as tools, implements, and instruments? If not, and if they are tools and nothing else, how can they be swept in as "personal property?" It must be on the very ground that they are *not* connected with the fraud, and then the statute will read thus, "all tools, implements, and instruments of the unlawful business shall be forfeited together with all other tools, implements, instruments, and personal property which have no such connection." No fair, sensible, or reasonable construction can be given to the particular words, without supplying the qualification which I have adopted; and when you have supplied that, it naturally restricts the operation of the more general words which follow, and the statute is read as forfeiting the tools, implements, instruments, and personal property connected with the

illegal business, and found within the building, yard, or enclosure where that business is carried on. This construction gives effect to all the language, because there are often many things connected with a trade or manufacture which are not properly described as either tools, implements, or instruments,—as for example fuel, fixtures, &c.

This construction entirely relieves the difficulty concerning the place or building, yard and enclosure, because it is reasonable that all things which are part of the unlawful business which are found within the same enclosure, whether inside or outside of the building, should be forfeited, and that all articles appropriate to such business which are so found, should be *prima facie* presumed to be connected with the fraud. This interpretation makes the whole law just, harmonious, and intelligible.<sup>1</sup>

New trial granted.

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*United States Circuit Court, Eastern District of New York.*

THE UNITED STATES v. QUANTITY OF RAGS, ETC.

The words “personal property” in section 48 of the Internal Revenue Act, forfeiting property used in illicit distilling, include all the property in the building where the still or spirits are found, whether of a nature to be used in the distillation of spirits or not.

What may be considered within the same building, yard, or enclosure.

This was an action under the 48th section of the Internal Revenue Law, to forfeit certain personal property, upon the following state of facts:—

One Young owned a brick house situated upon the part of a city lot; against the rear wall of which a stable had been formerly erected. The adjoining lot was also owned by Young, and had been covered with a wooden building having wide doors at each end constructed and used for a livery stable. The rear of both lots was enclosed together by a single fence across the two, thus forming one enclosure, from which the only access to the street for vehicles was through the livery stable; a small gate opened from the yard in the rear of the lots, and a swinging door had been constructed opening from the rear stable building to the

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<sup>1</sup> See the next case.